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Federal Communications Commission  
Office of Secretary

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review	)	
of the Commission’s Broadcast Ownership	)	MB Docket 02-277
Rules and Other Rules Adopted Pursuant to	)	
Section 202 of the Telecommunications Act	)	
of 1996	)	
	)	
Cross-Ownership of Broadcast Stations and	)	MM Docket 01-235
Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket 01-317
Ownership of Radio Broadcast Stations in	)	
Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket 00-244
	)	
Definition of Radio Markets for Areas Not	)	MB Docket 03-130
Located in an Arbitron Survey Area	)	
	)	
To: The Commission		

**COMMENTS ON PETITIONS FOR RECONSIDERATION AND OPPOSITIONS TO  
PETITIONS FOR RECONSIDERATION**

Sinclair Broadcast Group, Inc. (“Sinclair”), by its attorneys, hereby submits its comments concerning the Petitions for Reconsideration and Oppositions to Petitions for Reconsideration filed in the above-referenced proceeding.<sup>1</sup> These comments are limited to addressing a narrow, but important, issue: the proper method of counting noncommercial television stations that air

<sup>1</sup> 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definitions of Radio Markets, Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area, Report and Order and Notice of Proposed Rulemaking, FCC 03-127 (rel. July 2, 2003) (“Report & Order”).



identical programming. Specifically, Sinclair submits that where multiple commonly-owned noncommercial television stations in the same designated market area (DMA) air identical programming, such stations should not be counted as separate stations. This approach is dictated by common sense and is consistent with the Commission's policy of excluding commercial satellite stations from the number of stations in a market.

As demonstrated by Petitioner UCC et al. and Commissioner Adelstein, counting each noncommercial station that airs identical programming in a market as a separate station would lead to anomalous results in numerous markets.<sup>2</sup> Petitioner Duff, Ackerman & Goodrich, LLC also supported treating such noncommercial stations in the same manner as commercial satellite stations. Duff, Ackerman noted that the *Report & Order* expressly states that "Television satellite stations will be excluded from our count of full power television stations in the DMA where the satellite and parent stations are both assigned by Nielsen to the same DMA," but does not explicitly say that commonly-owned noncommercial stations that air identical programming will also not be counted as multiple stations.<sup>3</sup> Not a single Opposition filed in response to Petitions for Reconsideration in this proceeding refuted these contentions or even addressed this issue.

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<sup>2</sup> Petition for Reconsideration of Office of Communication of the United Church of Christ, Inc., Black Citizens for a Fair Media, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press, MB Docket No. 02-277, (Sept. 4, 2003) at 24 ("UCC et al."); Press Release, FCC Commissioner Jonathan S. Adelstein Calls on FCC to Fix Anomaly in New Media Rules Before They Take Effect, (July 15, 2003) (noting that, for example, both Sioux Falls, South Dakota, the 112th ranked DMA with six separate noncommercial stations—five of which have the same owner and broadcast the exact same programming—and Minot, North Dakota, the 155th largest DMA with 6 noncommercial stations that are part of statewide public broadcasting networks would have more television stations than far larger markets like Detroit, the 10th largest DMA, and Baltimore, the 24th largest DMA).

<sup>3</sup> Petition for Clarification of Duff, Ackerman & Goodrich, LLC in MB Docket No. 02-277 (Sept. 4, 2003) at 2 (quoting *Report & Order* at n.397) ("Duff, Ackerman").



Sinclair submits that commonly-owned noncommercial stations that air identical programming in a DMA should not be counted as separate stations.<sup>4</sup> Sinclair interprets 47 C.F.R. § 73.3555 note 5 to exclude commercial and noncommercial television stations that operate as “satellites” from the assessment of the number of stations in a DMA. Commonly-owned noncommercial stations that air identical programming are functionally equivalent to commercial television satellite stations that, by definition, retransmit all or a substantial part of the programming of a commonly-owned parent station.<sup>5</sup> As Duff, Ackerman has explained, there is absolutely no reason to distinguish commercial satellite stations from commonly-owned noncommercial stations that air identical programming for purposes of counting stations in a DMA. Counting noncommercial stations that broadcast identical programming as one station will result in a far more accurate count of the number of television stations in a given DMA and avoid the sort of anomalies identified by Commissioner Adelstein. Moreover, Sinclair is unaware of any negative consequences that would result from such an approach. Accordingly, this approach will further the Commission’s public interest goals of diversity, competition, and localism.

Therefore, Sinclair respectfully submits that the Commission should take the opportunity on reconsideration to clarify its position and state that noncommercial television stations that air

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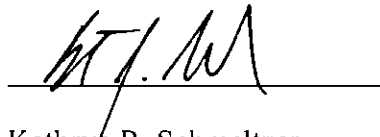
<sup>4</sup> Sinclair, however, strongly disagrees with UCC et al.’s alternative position that the Commission should exclude noncommercial stations from television markets entirely. As the Commission stated in the *Report & Order* and previously, noncommercial stations compete with commercial stations for viewers in local markets. *Report & Order* at n.398.

<sup>5</sup> See, e.g., *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd 12903 (Aug. 6, 1999) at ¶ 90.



identical programming will not be counted as separate stations in accordance with its policy for commercial satellite stations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K.R. Schmeltzer", is written over a horizontal line.

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Dated October 16, 2003